

to the state or his county, or to any school district or road district in his county, * * * which may be prosecuted in the name of the People of the State of Illinois."

By the latter provision the duty to prosecute all actions and proceedings for the recovery of revenues and penalties is expressly imposed on the State's Attorney of the county where the default occurred. By section 33 of the Counties Act, the duty is imposed upon the county board to take and order suitable and proper measures for the prosecution of all suits which it may be necessary to start to enforce the collection of taxes charged on the State assessment. The general subject matter of these two statutes, so far as pertinent here, is the collection of delinquent taxes. The former contains the express direction imposing the duty upon the State's Attorney to prosecute such actions. This is in keeping with the purpose for which the office of State's Attorney was created. He is the attorney and legal adviser of the county officials in all matters pertaining to the official business of the county, but his powers and duty pertain solely to those matters in which a knowledge of the law is required. Section 33 of the Counties Act contains no express authorization empowering it to employ private attorneys to institute such proceedings. If any such power is conferred it could arise only by implication.

The rule is that where there is to be found in a statute a particular enactment, it is to be held operative as against the provisions on the subject either in the same act or in the general laws relating thereto. *Robbins v. Lincoln Park Commissioners*, 332 Ill. 571; *Handtoffski v. Chicago Consolidated Traction Co.*, 274 Ill. 282; *City of Chicago v. M. & M. Hotel Co.*, 248 Ill. 264.

But we do not regard these statutes as being in such conflict that a rule of construction must be adopted which accepts one and rejects the other. All statutes relating to the same subject must be compared and so construed with reference to each other that effect may be given to all the provisions of each, if it can be done by any fair and reasonable construction. It is presumed that the several statutes relating to one subject are governed by one spirit and policy and that the legislature intended the several statutes to be operative and harmonious. (*Ketcham*

v. *Board of Education*, 324 Ill. 314.) The direction in section 33, that the county board shall take and order suitable and proper means for the prosecution of suits brought to enforce the collection of taxes, evidently means that the board, as the governing agency of the county in charge of expending the county's funds, has the duty of meeting the expenses necessarily incurred in such litigation. Such duty is similar to the general duties of the board and the purposes for which the board was created by the constitution. It is in accord with its functions generally as outlined by statute. The performance of such a duty is in a field foreign to the field in which the State's Attorney performs his duty. The duty resting upon the State's Attorney to prosecute suits for the collection of delinquent taxes requires performance in a field outside the scope of the duties of a county board. It seems that the legislature intended to preserve a relationship between the duties of the board and those of the State's Attorney which is not dissimilar from that of attorney and client.

It is alleged in appellants' pleadings that the occasion for employing private counsel was created by the increase of the number of defaults in the payment of taxes and that the State's Attorney did not have the time, in connection with his other duties, to institute such suits. County boards can exercise only such powers as are expressly given by law or such as arise by necessary implication from the powers granted or are indispensable to carry into effect the object and purpose of their creation. (*Marsh v. People*, 226 Ill. 464; *County of Cook v. Gilbert*, 146 Ill. 268.) No provision is made in the law which authorizes a board to employ private counsel in collection of delinquent taxes under the emergency pleaded, even though the State's Attorney approves the contracts as to form and gives his silent acquiescence to the procedure adopted. His consent cannot operate to supply the board with a power which the legislature has seen fit to withhold.

Appellants rely upon cases such as *Mix v. People*, 116 Ill. 265, and *Ottawa Gas Light and Coke Co. v. People*, 138 Ill. 336, as holding that a county board has authority to employ private counsel to enforce the collection of delinquent taxes. There are statements in the opinions in

those cases which appear to support appellants' contentions, but the ruling in such cases must be considered in the light of the facts. In each of them the authority of private counsel to represent the plaintiffs was questioned by a taxpayer against whom the suit to collect had been instituted, while in these cases it is a direct attack upon the power which the board undertook to exercise. This distinction was noted in *People v. Straus*, 355 Ill. 640. That was an action to foreclose a tax lien started by one of the appellants in these cases as attorney for the People serving under the contracts in question. His authority to appear in such capacity was questioned. In noting that it was a collateral attack on his authority raised by a taxpayer it was said: "Numerous cases are cited tending to show that it was the proper function of the State's Attorney to prosecute this case, and there is much argument for the purpose of showing that the contract between the county commissioners and the solicitor who appeared for the People in the trial court is unconscionable, contrary to public policy and void. The principal case relied on in this connection is *Fergus v. Russel*, 270 Ill. 304. That case is not in point on this inquiry, because the employment was there directly attacked and not brought collaterally in issue as is attempted here." The statements in those cases which are counter to the conclusions reached are not adhered to.

The law is well settled that when the constitution or the laws of the State create an office, prescribe the duties of its incumbent and fix his compensation, no other person or board, except by action of the legislature, has the authority to contract with private individuals to expend public funds for the purpose of performing the duties which were imposed upon such officer. (*Fergus v. Russel*, 270 Ill. 304; *Stevens v. Henry County*, 218 Ill. 468; *Hope v. City of Alton*, 214 Ill. 102.) The contracts of employment under which appellants claim were *ultra vires* and void.

Appellants contend that even though the contracts are *ultra vires* and void, the county having received the benefits of their services by the collection of more than \$16,000,000 of delinquent taxes, it is now estopped to deny its liability to pay for such services. They cite and rely upon cases

such as *Hall v. County of Cook*, 359 Ill. 528. Such contention ignores the distinction made in many cases between contracts of a municipality which are *ultra vires* for want of power to make and which are wholly void, and those cases where the municipality had the power to act but by reason of an improper exercise of the power the contract is void. The *Hall* case and other cases are of the latter class.

In *Hope v. City of Alton*, 214 Ill. 102, an ordinance of the city created a legal department and prescribed its duties. While such ordinance was in full force, the city council adopted a resolution employing a private attorney to appear in litigation in which the city was a party. In an action by such attorney to recover for compensation for such services, this court held that the act of employment was void and that the city was not estopped from defending on the grounds that it had no power to make the contract. This case is controlling here. The principle has been often stated as follows: Everyone is presumed to know the extent of a municipal corporation's control over its public funds and such corporation can not be estopped to aver its incapacity when an effort is made to enforce against it a contract which provides for payment from such funds when it had no power to make such an agreement. *People v. Parker*, 231 Ill. 478; *May v. City of Chicago*, 222 Ill. 595; *City of Danville v. Danville Water Co.*, 178 Ill. 299.

Appellants also contend that they should be permitted to recover on a *quantum meruit*. Such a recovery is founded on the implied promise of the recipient of services or material to pay for something which he has received that is of value to him. Such principle can have no application in this case for the reason that the contracts were wholly void and created no rights and imposed no obligations. They come within the principle of law that where the legislature has withheld a power it is the same as though the exercise of the power was prohibited by law. (*Continental Ill. Nat. Bank and Trust Co. v. Peoples Trust and Savings Bank*, 366 Ill. 366.) To permit recovery of compensation in these cases on a *quantum meruit* would, in legal effect, give sanction to the giving of public funds to private use for the performance of duties which the

law imposed upon the State's Attorney and for which he receives the salary fixed by law.

Appellee contends that there was no appropriation ordinance in existence when the contract was made covering the liability incurred and that, therefore, the contract was void. Appellants' pleadings contained allegations of facts relative to items of the appropriation ordinance for the year in which the contract was made, and it is argued that the motion to dismiss admitted these facts which it is claimed are sufficient to show the liability incurred was covered by proper appropriation. The contracts having been declared void under the views expressed, therefore it is not necessary to consider the question of the sufficiency of the facts pleaded to show a proper appropriation.

The decree in No. 27169 sustaining the motion to strike appellants' answer and counterclaim was correct and will be affirmed, but as the appellee asked for certain other relief against the defendants and for the purpose of preserving the rights and questions under that branch of the cause, the cause is remanded to the circuit court with directions to proceed as to such matters. The judgment sustaining appellee's motion to strike appellants' pleading in No. 27163 was correct and is affirmed.

No. 27163, Judgment affirmed.

No. 27169, Decree affirmed, and cause remanded, with directions.

